HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

F.A.O.No.841 of 2007
Date of decision : 26.02.2007

The Rajasthan State Road Transport Corpn. .....Appellant

versus

Smt.Surjina alias Subhani and others .....Respondents

CORAM : HON'BLE MR. JUSTICE HEMANT GUPTA.

Present : Mr.Munishwar Puri, Advocate for the appellant.

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ORDER

HEMANT GUPTA, J.

The challenge in the present appeal is to the award dated 1.9.2006, passed by the learned Motor Accident Claims Tribunal (hereinafter referred to as the Tribunal), by the owner of the offending vehicle, on the ground that the finding recorded by the learned Tribunal that the driver was negligent in driving the vehicle, is not sustainable in law; that the amount of compensation is excessive; that the mother of the deceased has filed a separate application which is still pending adjudication and that the learned Tribunal has not discussed the Will Exhibit R-2, allegedly executed by the deceased.

The learned Tribunal has recorded a finding that the driver of the offending vehicle was negligent, on the basis of statement of PW-1 Farrukh, who has deposed that the Bus struck against the Motor Cycle from behind. The learned Tribunal found that the statement of the driver RW-1, Hamid does not inspire confidence and that the statement of PW-1

Farrukh is corroborated from the contents of the FIR, Exhibit P-3. It has further been found that the evidence of the owner and driver of the vehicle is contradictory to the averments made in the written statement, wherein they have denied the accident itself. In view of the said fact, the finding of the learned Tribunal that the accident was caused due to rash and negligent driving of the driver of the appellant, is affirmed.

The learned Tribunal has assessed the monthly income of the deceased as Rs.3000/- per month and after deducting 1/3rd of the total income towards his own personal expenses and after applying the multiplier of 16 to the annual dependency of Rs.24000/-, an amount of Rs.3,84,000/- has been awarded as compensation.

Learned counsel for the appellant has contended that employer of the deceased has not been examined, therefore, the monthly income has been wrongly assessed. Such argument of learned counsel for the appellant is not tenable as it was the case of the claimants that the deceased was earning Rs.4500/- per month. But the learned Tribunal assessed the monthly income on the basis of the fact that the deceased was a trained driver having a valid driving licence to drive heavy goods vehicles. Therefore, the inference drawn by the learned Tribunal cannot be said to be incorrect in any manner.

The argument that the claimants are not entitled to compensation on account of the Will, Exhibit R-2, executed by the deceased and that the claim of his mother is pending, is without any merit. The counsel of the mother has made a statement before the learned

Tribunal on 28.8.2006 that an application has already been filed by her for withdrawal of the claim petition, filed by her. In view of the said statement, the question of Will or the pendency of another petition becomes redundant.

Thus, I do not find any illegality or irregularity in the findings recorded by the learned Tribunal.

In view of the above, the present appeal is dismissed.

(HEMANT GUPTA)
JUDGE

February 26, 2007
**mohinder*